

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CITY OF WASHINGTON
NPDES Permit #9271001**

**ADMINISTRATIVE CONSENT
ORDER**

NO. 2007-WW- 13

**TO: Richard Cicalo
Mayor
City Hall
P.O Box 516
215 E. Washington St.
Washington, IA 52353**

I. SUMMARY

This administrative consent order (Order) is entered into between the City of Washington (Washington) and the Iowa Department of Natural Resources (Department) for the purpose of achieving and maintaining compliance with applicable effluent and water quality standards for the operation of a wastewater disposal system. Pursuant to this Order, Washington shall comply with the compliance schedule contained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Paul Brandt
IDNR Field Office #6
1023 W. Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to this Order:

Jon C. Tack
Legal Services Bureau
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph. 515-281-8889

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Washington operates a wastewater treatment facility pursuant to NPDES Permit # 9271001. The existing NPDES permit expired on September 13, 2006. Washington made timely application for renewal and the permit remains valid awaiting reissuance by the Department.

2. The Washington wastewater treatment facility has generally maintained compliance with discharge limits, except for occasional, infrequent exceedances. However, current influent levels exceed the facility's design parameters for biological oxygen demand (BOD) and an increase in loading will occur due to industrial and residential development in the area. The wastewater facility includes a previously permitted equalization basin that is designed to allow for the discharge of wastewater to the outflow pipe of the facility. This discharge must be terminated as a part of facility improvements. Additionally, Washington has experienced problems with a lift station located in Sunset Park in Washington. Mechanical failures and precipitation events at this lift station have led to sanitary sewer overflows (SSOs). Such SSOs are prohibited.

3. Washington has submitted a construction permit application to the Department for approval of the construction of an 18" gravity sewer line to serve a new bio-diesel plant. In light of the current exceedence of influent design flows, this Order must be executed prior to the approval of the construction of this sewer line.

4. On May 17, 2007, Washington met with the Department and agreed to work cooperatively to complete the construction of improvements to the wastewater treatment and collection systems. A schedule for the completion of upgrades was proposed by Washington and accepted by the Department.

IV. CONCLUSIONS OF LAW

The Department and Washington agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The discharge of untreated pollutants from an SSO or equalization basin is contrary to this provision.

2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to

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the terms of a permit. Subrule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations as established in chapters 61 and 62 of the rules.

3. Pursuant to 567 IAC 64.2(10) "g", sewer extension construction permits may be granted for sanitary sewer extensions that are sized to serve future loads that would exceed the capacity of the existing treatment works. However, initial connections shall be limited to the load that can be handled by the existing treatment works. The Department will determine this load and advise the applicant of the limit. This limitation will be in effect until additional treatment capacity has been constructed. This Order is issued in compliance with this rule provision.

V. ORDER

The Department and Washington hereby agree, and Washington is hereby ordered to comply with the following schedule:

1. Upon the execution of this Order, the Department shall issue a permit authorizing the construction of 18" gravity sewer line to serve the bio-diesel facility as proposed in the previously filed construction permit application. Additional connections to this sewer line, other than those connections identified in the construction permit application, are prohibited unless specifically authorized by the Department after application for approval by Washington. The discharge of industrial process wastewater or cooling water to this sewer line is specifically prohibited unless authorized by the Department.

2. Until necessary construction is completed as described herein, Washington agrees to consult with the Department prior to connecting any new business or multifamily dwelling to the sanitary sewer system in order to determine whether sufficient capacity exists to handle the additional loading while maintaining compliance with applicable effluent standards.

3. By August 1, 2007, Washington shall contact the Department to schedule a project initiation meeting with the Department's construction permitting staff.

4. From July 1, 2007 to December 31, 2009, Washington shall conduct evaluations to identify sources of infiltration and inflow into the sewer collection system and take steps to reduce or eliminate such infiltration and inflow. Washington shall provide the Department with semiannual updates, beginning in January of 2008, in regard to progress in identifying and eliminating or reducing infiltration and inflow into the sewer system.

5. By July 1, 2008, Washington shall submit a Facility Plan to the Department for upgrades to or replacement of the wastewater facility. The proposed construction shall be

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designed to meet the identified future capacity requirements for Washington and shall eliminate discharges from the equalization basin and lift stations.

6. By January 1, 2009, Washington shall submit preliminary plans and specifications to the Department for the identified upgrades or replacement facility.

7. By June 1, 2009, Washington shall submit final plans and specifications to the Department for the identified upgrades or replacement facility.

8. By September 15, 2009, Washington shall begin construction of the identified upgrades or replacement facility.

9. By May 11, 2011, Washington shall complete construction of the identified upgrades or replacement facility. Construction shall be considered completed, for the purposes of this Order, when the facility begins operating.

10. Nothing in this Order shall be deemed a waiver of continuing compliance with all applicable effluent limitations and water quality standards.

11. Washington agrees and is hereby ordered to pay a stipulated penalty in the amount of \$500 per month, or part thereof, for failure to comply with the compliance deadlines contained in provisions V.2 through V.8, above. Washington further agrees and is hereby ordered to pay a stipulated penalty in the amount of \$300 per day, or part thereof, for failure to comply with the compliance deadline contained in provision V.9, above. The failure to comply with any compliance deadline contained herein shall not trigger the assessment of any stipulated penalty to the limited extent that such failure was caused by any unreasonable delay by the Department in the performance of any action required of the Department.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with penalties.

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- a. Economic Benefit. Washington has achieved a cost savings by delaying the upgrade or replacement of existing wastewater facilities. This cost savings includes savings realized through the use of the outfall from the equalization basin and the documented SSOs. The execution of this Order constitutes a good faith attempt by both parties to achieve compliance and resolve past violations, therefore the Department is assessing economic benefit penalties only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein give consideration to the economic benefit achieved by Washington.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. In this case, Washington has maintained compliance with effluent samples but has discharged untreated wastewater from the equalization basin and at least one of the lift stations. In light of these factors and the cooperative efforts of Washington, the Department has determined that the assessment of a penalty is appropriate only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein also give consideration to the gravity of the violation.
- c. Culpability. Washington has a degree of culpability due to the delay in upgrading or replacing existing wastewater facilities prior to the current situation in which the facility loading exceeds design capacity. Washington also has a degree of culpability in failing to prevent the discharge of untreated wastewater from the equalization basin and SSOs. However, the mitigating factor of the cooperative efforts of Washington to undertake needed facility upgrades and improvements negates any need for the assessment of a penalty at this time. The Department has determined that the assessment of a penalty is appropriate only in the event of noncompliance with the compliance schedule contained in this Order. The stipulated penalties contained herein also give consideration to the culpability of Washington.


VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Washington. By signature to this Order, all rights to appeal this Order are waived.

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VIII. NONCOMPLIANCE

Compliance with sections V.2- V.8 of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of
July, 2007



CITY OF WASHINGTON

Dated this 7 day of
July, 2007

NPDES #65252001; Field Office #6; Jon Tack; EPA; Wayne Farrand; I.B.2.b